



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,515	07/27/2006	Raymond Clarke	14752-1US	2212
93049	7590	01/11/2012		
Axiom Global Inc. 75 Spring Street, Floor 8 New York, NY 10012			EXAMINER THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER
			1782	
			NOTIFICATION DATE	DELIVERY MODE
			01/11/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jmcDonald@mcdonaldj.com
jmcDonald@axiomlaw.net
thprichardson@comcast.net

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/597,515	Applicant(s) CLARKE ET AL.	
	Examiner VIREN THAKUR	Art Unit 1782	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 17,18,22-28,30-36 and 38-60.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Viren Thakur/
Primary Examiner, Art Unit 1782

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 40, 50 and 55-60 under 35 U.S.C. 112, first paragraph. It is noted that page 15, paragraphs 41 and 42 of applicant's specification discloses using multiple chambers having an ACM therein and where the access of gas in the different chambers can be controlled in different ways..

Continuation of 11. does NOT place the application in condition for allowance because: On page 19 of the response, Applicants assert that White's gas regulating device is quite different from the module required by the claims and that White does not employ a module having a first surface in contact with the inner atmosphere and a second surface in contact with an exterior atmosphere. It is noted however, that Marcellin teaches the particular structure of the module, as recited in claim 17. White further teaches providing a shipping container into which respiring foodstuff has been placed, and where the larger shipping container also comprises a gas regulating device placed within the container (column 9, lines 28-57 and column 15, line 62 to column 16, line 44). Since both Marcellin and White teach an outer container where the outer container holds respiring foodstuff, it would have been obvious to have modified Marcellin and to employ a shipping container as taught by White, for the purpose of being able to provide a portable container for shipping respiring foodstuffs. Even if White recites "shipping units" which are placed into a container, it is noted that White has still only been relied on to teach a portable shipping container into which can be placed respiring foodstuff for the purpose of providing a portable container for respiring foodstuff.

On page 20 of the response, Applicants assert that Liston does not employ a module of any kind within the sealed container and the hollow fiber membranes are not exposed to the gas surrounding the product in the storage facility.

This argument is not persuasive. It is noted that Liston has clearly been relied on to teach that it has been conventional to rely on sensors for sensing the concentration within the container and subsequently using this measurement to control the input of outside air into a gas separation device which subsequently injects the requisite gas into the container via a conduit for controlling the gas concentration inside the container. It would thus have been within the routine capabilities of one having ordinary skill in the art to further employ sensors and subsequent automation for the purpose of actively controlling the atmosphere within the storage environment of the container of Marcellin.

On page 23 of the response, Applicants assert that it is not correct that Garrett discloses a second module that is at any time in direct contact with the atmosphere surrounding the respiring biological material.

This argument is not persuasive, since Garrett states on column 3, lines 36-39 that the controlled gas is subsequently permeated through the low pressure side and returned to the interior of the container as shown generally by Arrow B. This would lead one having ordinary skill in the art to conclude that the membrane of module 17, is indeed an atmosphere control member since the gas permeates through this side of the module and back into the container.

It is noted that claims 40, 50 and 53 newly recite "access of gas to the auxiliary closed chamber being controlled in different ways." It is noted that this is a new limitation that was not previously presented. The previous claims only recited that the auxiliary chamber had an inlet and outlet for gas and an atmosphere control member. The limitation of the access of gas to the auxiliary chamber being different from the closed chamber was thus not previously presented and would require further consideration and/or search.